



UNITED STATES MARINE CORPS

EASTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
67 VIRGINIA DARE DRIVE, SUITE 145
CAMP LEJEUNE, NORTH CAROLINA 28547

IN REPLY REFER TO:

5810

EJC

11 Jul 14

EASTERN JUDICIAL CIRCUIT RULES OF PRACTICE

From: Circuit Military Judge

Subj: PUBLICATION OF ATTACHMENT (20) AND MODIFICATION OF RULE 8.8, ATTACHMENT (3), INTERIM RULE 8.9, ATTACHMENT (19) TO EASTERN JUDICIAL CIRCUIT RULES OF PRACTICE

Ref: (a) Eastern Judicial Circuit Rules of Practice dated 31 Mar 2013
(b) ALLNAV 049/14

Encl: (1) Modified Rule 8.8, MOTION FOR DOCKETING
(2) Modified Attachment (3) to EJC Rules of Practice, Motion for Docketing
(3) Modified Interim Rule 8.9, APPOINTMENT OF A GUARDIAN BY THE MILITARY JUDGE FOR CERTAIN VICTIMS OF CRIMES ADJUDICATED UNDER THE UCMJ
(4) Trial Management Order, Attachment (20) to EJC Rules of practice

1. **Purpose:** To publish the following:

- a. Modified Rule 8.8 of reference (a)
- b. Modified Motion for Docketing, Attachment (3) to reference (a)
- c. Modified Interim Rule 8.9, Appointment of a Guardian, of reference (a)

d. Modified Attachment 19 of reference (a)

e. Trial Management Order, Attachment (20) of reference (a)

2. **Cancellation:** The following are hereby canceled:

- a. Rule 8.8 of reference (a)
- b. Attachment (3) of reference (a)

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c. Interim Rule 8.9 to reference (a)

d. Attachment (19) of reference (a)

3. **Background:**

a. In reference to modified Rule 8.8, MOTION FOR DOCKETING and the sample Motion for Docketing, attachment (3), pretrial arraignment of the accused is preferred over the use of Motions for Docketing, unless such an arraignment is impracticable.

b. In reference to the modification of Interim Rule 8.9, recent changes (see reference (b)) in the legal rights and benefits afforded to victims have necessitated the implementation of additional rules governing the appointment of a guardian for minor or deceased victims of crimes being adjudicated under the UCMJ. Attachment (19) includes the accompanying order and trial gouge script associated with this modification.

c. Enclosure (20) is the Trial Management Order used by the court to order trial dates and milestones for a case.

4. **Action:**

a. Military judges within this Circuit shall ensure enforcement of the rules contained in the enclosures.

b. Counsel practicing before this Circuit shall become familiar with and comply with the references and the enclosures.

c. Commanding Officers, Officers-in-Charge, and Supervisory Attorneys of cognizant legal providers shall ensure distribution to, and compliance by, all affected counsel.

5. **Effective Date:** Enclosures (1), (2), (3), and (4) are effective immediately and shall remain effective until cancelled or otherwise modified by higher authority.



D. M. McCONNELL

Modified Rule 8.8: Motions for Docketing

Modified Rule 8.8: Arraignment is the preferred means of setting trial dates and filing deadlines. When pretrial arraignment is impracticable, a Motion for Docketing (MFD), Attachment (3), is permissible, provided it is unopposed. The use of an MFD does not eliminate the need to submit a PTIR for future court appearances.

Modified Interim Rule 8.9: Appointment of a Guardian by the Military Judge for Certain Victims of Crimes Adjudicated under the UCMJ.

Interim Rule 8.9: (a) In the case of a victim of an offense under the UCMJ, as defined by 10 U.S.C. 806b(b), who is under 18 years of age, incompetent, incapacitated, or deceased, the military judge shall designate a legal guardian from among the representatives of the estate of the victim, a family member, or other suitable person to assume the victim's rights under 10 U.S.C. §806b(a). Factors to be considered by the military judge include, but are not limited to, the age and maturity, relation to the victim, and physical location of any proposed designee; any costs associated with representation by the potential designee; the willingness of the potential designee to serve as representative; the previous appointment of a legal guardian or representative by another court of competent jurisdiction; the preferences of the victim, if ascertainable; any potential delay in any court-martial proceeding that may be caused by a specific appointment; and the recommendations of trial counsel, defense counsel, and when appropriate, the victim's legal counsel. However, in no event may the person so designated be the accused.

(b) In cases where an alleged victim qualifies for a legal guardian as defined in 10 U.S.C. 806b(c), the initial PTIR shall include a recommendation from the parties (to include VLC if applicable) regarding this appointment and an order appointing the recommended legal guardian to be signed by the military judge. The order shall be prepared by the trial counsel and specifically identify the recommended guardian, the relationship of the guardian to the alleged victim and recite the duties of the guardian. (See Attachment 19.) The appointment of the guardian shall be accomplished at arraignment, however, either party may request, or the military judge shall order, a 39(a) session under this rule in cases where a guardian cannot be identified or agreed upon by the parties.

(c) At any time after appointment, an individual shall be excused as the representative upon request by the representative or a finding of good cause by the military judge. If the representative is excused, the military judge shall appoint a successor using the procedures in subparagraphs (a) and (b) of this rule.